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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222461
Party	Defendant Lions Gate Entertainment Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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<i>In re Matter of Application No. 86/346,513 for the mark: POPI</i> Victoria Kheel, Opposer, v. Lions Gate Entertainment Inc., Applicant.	Opposition No. 91-222461 APPLICANT LIONS GATE ENTERTAINMENT INC.’S ANSWER TO OPPOSER VICTORIA KHEEL’S FIRST AMENDED NOTICE OF OPPOSITION
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Applicant Lions Gate Entertainment Inc. (“Applicant”), by and through its counsel, responds to the First Amended Notice of Opposition (“Opposition”) filed by Opposer Victoria Kheel (“Opposer”) as follows:

In response to the preliminary paragraph of the Opposition, Applicant admits that it filed Application Serial No. 86/346,513 (the “Application”) for the trademark POPI, but denies that Opposer will be damaged by the Application or its registration. Applicant lacks sufficient information or belief to admit or deny any remaining allegations contained in the preliminary paragraph of the Opposition, and therefore denies each and every such allegation.

1. Applicant admits that, according to information available to it on <uspto.gov>, Opposer is listed as the owner of the standard character mark POPPY’S, in International Class 35, U.S. Reg. No. 4,537,279 (the “Registration”), filed in the U.S. Patent & Trademark Office (“PTO”) on October 12, 2013, for the following goods: “All purpose cleaning preparations; All-purpose cleaners; Bath soaps; Carpet cleaning preparations; Cleaning agents and preparations; Cleaning preparations; Cleaning preparations for household purposes; Dish detergents; General purpose cleaning, polishing, and abrasive liquids and powders; Glass cleaning preparations;

Granulated soaps; Hand soaps; Household cleaning preparations; Laundry soap; Leather cleaning preparations; Liquid soaps for hands, face and body; Odor removers for pets; Oven cleaners; Pet stain removers; Powder cleaners for metals, ceramics and carpets; Soap powder; Soaps for household use; Soaps for personal use; Soaps for toilet purposes.” Applicant admits that, according to information available to it on <uspto.gov>, the Registration issued on May 27, 2014. Applicant denies that emphases used by Opposer in her description of the goods recited in the Registration are used in the actual recitation of goods the Registration. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 1 of the Opposition, and therefore denies each and every such allegation.

2. Applicant denies the allegations contained in paragraph 2 of the Opposition.

3. Applicant admits that it was aware of the Registration when its licensee began selling soap under the POPI mark. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 3 of the Opposition, and therefore denies each and every such allegation.

4. Applicant admits that it filed the Application on July 24, 2014 in International Class 3 for “Cosmetics; cosmetic preparations for body care; nail polish; nail decals; bath crystals; bath gel; bath oil; bath salts; body lotion; cream soaps; fragrances; moisturizing creams; shaving soap; soaps for personal use.” Applicant denies that the emphases used by Opposer in her description of the goods recited in the Application are used in the actual recitation of goods the Application.

5. Applicant admits that it filed the Application pursuant to 15 U.S.C. § 1051(b) and that its authorized licensee has used the POPI mark on soap in commerce. Applicant denies the remaining allegations contained in paragraph 5 of the Opposition.

6. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 6 contains quotes taken out of context from that office action.

7. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 6 contains a quote taken out of context from that office action. Applicant denies that the emphases used by Opposer in her quotation of the office action are used in the actual office action.

8. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 8 contains a quote taken out of context from that office action. Applicant denies that the emphases used by Opposer in her quotation of the office action are used in the actual office action.

9. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 9 contains a quote taken out of context from that office action.

10. Applicant admits that on December 3, 2014, Dan Hadl, Senior Vice President of Opposer, executed an Optional Declaration in Support of Trademark Application Filed Via Electronic Means in support of the Application, and that said declaration contained a typographic error by stating "Class 9" instead of "Class 3."

11. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015, and that Paragraph 11 contains quotes taken out of context from that office action response.

12. Applicant denies the allegations contained in paragraph 12 of the Opposition.

13. Applicant denies the allegations contained in paragraph 13 of the Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Opposition.

15. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015, and that Paragraph 15 contains a quote taken out of context from that office action response. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 15 of the Opposition, and therefore denies each and every such allegation.

16. Applicant denies the allegations contained in paragraph 16 of the Opposition.

17. Applicant admits that the domain name <popisoap.com> automatically redirects web browsers to <chivasskincare.com/oitnb>. Applicant admits that Paragraph 17 contains quotes taken out of context from <chivasskincare.com/oitnb>. Applicant is unable to verify the authenticity of Exhibit C because Opposer has not clearly marked it as an attachment to the Opposition. Applicant denies the remaining allegations contained in paragraph 17 of the Opposition.

18. Applicant admits that Paragraph 18 contains quotes taken out of context from <chivasskincare.com/faq>. Applicant is unable to verify the authenticity of Exhibit B because Opposer has not clearly marked it as an attachment to the Opposition. Applicant denies the remaining allegations contained in paragraph 18 of the Opposition.

19. Applicant admits that Paragraph 19 contains quotes taken out of context from <chivasskincare.com/faq>. Applicant is unable to verify the authenticity of Exhibit B because Opposer has not clearly marked it as an attachment to the Opposition. Applicant denies the remaining allegations contained in paragraph 19 of the Opposition.

20. Applicant denies the allegations contained in paragraph 20 of the Opposition.

21. Applicant denies the allegations contained in paragraph 21 of the Opposition.

22. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 22 of the Opposition related to the definition of “distinguishable” in the

Cambridge Dictionary, and therefore denies this allegation. Applicant denies the remaining allegations contained in paragraph 22 of the Opposition.

23. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015, and that Paragraph 23 contains a quote taken out of context from that office action response. Applicant denies that the emphases used by Opposer in her quotation of the office action response are used in the actual office action response.

24. Applicant admits that Paragraph 24 contains a quote taken out of context from <chivasskincare.com/oitnb>. Applicant is unable to verify the authenticity of Exhibit C because Opposer has not clearly marked it as an attachment to the Opposition. Applicant denies the remaining allegations contained in paragraph 24 of the Opposition.

25. Applicant denies the allegations contained in paragraph 25 of the Opposition.

26. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015, which response included, as an attachment, a printout from Opposer's website. Applicant is unable to admit or deny what documents were included in the contents of the PTO's file for the Application, and, therefore denies this allegation.

Applicant denies the remaining allegations contained in paragraph 26 of the Opposition.

27. Applicant denies the allegations contained in paragraph 27 of the Opposition.

28. Applicant denies the allegations contained in paragraph 28 of the Opposition.

29. Applicant denies the allegations contained in paragraph 29 of the Opposition.

30. Applicant denies the allegations contained in paragraph 30 of the Opposition.

31. Applicant denies the allegations contained in paragraph 31 of the Opposition.

32. Applicant denies the allegations contained in paragraph 32 of the Opposition.

33. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 33 contains a quote taken out of context

from that office action. Applicant denies the remaining allegations contained in paragraph 33 of the Opposition.

34. Applicant denies the allegations contained in paragraph 34 of the Opposition.

35. Applicant denies the allegations contained in paragraph 35 of the Opposition.

36. Opposer has not defined the phrase “POPI Soap website” and, therefore, Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 36 of the Opposition, and therefore denies each and every such allegation.

37. Applicant denies the allegations contained in paragraph 37 of the Opposition.

38. Applicant admits that whether the sound of Applicant’s and Opposer’s marks is the same is a fact that can be proven true or false. Applicant denies the remaining allegations contained in paragraph 38 of the Opposition.

39. Applicant denies the allegations contained in paragraph 39 of the Opposition.

40. Applicant denies the allegations contained in paragraph 40 of the Opposition.

41. Applicant is unable to verify the authenticity of Exhibit D because Opposer has not clearly marked it as an attachment to the Opposition. Applicant denies the remaining allegations contained in paragraph 41 of the Opposition.

42. Opposer has not defined the phrase “POPI Soap website” and has not clearly marked Exhibit D as an attachment to the Opposition and, therefore, Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 42 of the Opposition, and therefore denies each and every such allegation.

43. Applicant denies the allegations contained in paragraph 43 of the Opposition.

44. Applicant denies the allegations contained in paragraph 44 of the Opposition.

45. Applicant denies the allegations contained in paragraph 45 of the Opposition.

46. Applicant denies the allegations contained in paragraph 46 of the Opposition.

47. Applicant denies the allegations contained in paragraph 47 of the Opposition.

48. Applicant denies the allegations contained in paragraph 48 of the Opposition.

49. Applicant denies the allegations contained in paragraph 49 of the Opposition.

50. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015, and that Paragraph 50 contains edited quotes taken out of context from that office action response, and that Applicant submitted the office action response in support of its position that the Application should mature to registration. Applicant denies that the emphases used by Opposer in her quotation of the office action response are used in the actual office action response. Applicant denies the remaining allegations contained in paragraph 50 of the Opposition.

51. Applicant denies the allegations contained in paragraph 51 of the Opposition.

52. Applicant denies the allegations contained in paragraph 52 of the Opposition.

53. Applicant denies the allegations contained in paragraph 53 of the Opposition.

54. Applicant denies the allegations contained in paragraph 54 of the Opposition.

55. Applicant denies the allegations contained in paragraph 55 of the Opposition.

56. Applicant denies the allegations contained in paragraph 56 of the Opposition.

57. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 57 contains an edited quote taken out of context from that office action. Applicant denies the remaining allegations contained in paragraph 57 of the Opposition.

58. Opposer did not include an allegation in paragraph 58 of the Opposition.

59. Applicant denies the allegations contained in paragraph 59 of the Opposition.

60. Applicant admits that the PTO issued an office action refusing registration of the Application on August 25, 2014, and that Paragraph 60 contains edited quotes taken out of

context from that office action. Applicant admits that it, through its attorney, submitted a response to the August 25, 2014 office action on March 2, 2015 which was signed by its attorney. Applicant denies any remaining allegations contained in Paragraph 60 of the Opposition.

61. Opposer's allegations in Paragraph 61 constitute legal conclusions and, thus, Applicant is unable to admit or deny them.

62. Certain of Opposer's allegations in Paragraph 62 constitute legal conclusions and, thus, Applicant is unable to admit or deny them. Applicant denies the remaining allegations contained in paragraph 62 of the Opposition.

63. Opposer's allegation in Paragraph 63 constitutes a legal conclusion and, thus, Applicant is unable to admit or deny them.

64. Applicant denies the allegations contained in paragraph 64 of the Opposition.

65. Applicant denies the allegations contained in paragraph 65 of the Opposition.

66. Applicant admits the allegations contained in paragraph 66 of the Opposition.

67. Applicant admits the allegations contained in paragraph 67 of the Opposition.

68. Applicant admits that it filed a motion to dismiss the Opposition on July 16, 2015. Applicant denies the remaining allegations contained in paragraph 68 of the Opposition.

69. Applicant admits that, according to information available to it on <uspto.gov>, the Registration issued on May 27, 2014. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 69, and therefore denies these allegations.

70. Applicant admits that it filed the Application on July 24, 2014, and that this date postdates the issuance of the Registration. Applicant lacks sufficient information or belief to

admit or deny the remaining allegations contained in paragraph 70, and therefore denies these allegations.

71. Applicant denies the allegations contained in paragraph 71 of the Opposition.

72. Applicant admits that its use of the POPI mark is without the consent of Opposer, and that Opposer's consent is not required. Applicant denies the remaining allegations contained in paragraph 72 of the Opposition.

73. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 73, and therefore denies these allegations.

74. Applicant denies the allegations contained in paragraph 74 of the Opposition.

75. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 75, and therefore denies these allegations.

76. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 76, and therefore denies these allegations.

77. Applicant is unable to verify the authenticity of Exhibits E and F because Opposer has not clearly marked them as attachments to the Opposition. Applicant lacks sufficient information or belief to admit or deny the remaining allegations contained in paragraph 77, and therefore denies these allegations.

78. Applicant denies the allegations contained in paragraph 78 of the Opposition.

79. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 79, and therefore denies these allegations.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Failure to State a Claim

Opposer fails to state a claim for fraud on the PTO.

Second Affirmative Defense – Third Party Use

Opposer's rights, if any, to the POPPY'S trademark is weakened by third party use.

* * *

In sum, Applicant prays that the Opposition be dismissed with prejudice, judgment be entered for Applicant, and the Application mature to registration.

Respectfully submitted,

Dated: February 3, 2016

/s/Paul A. Bost
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 3rd day of February, 2016.

/s/Paul A. Bost
Paul A. Bost

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Ilana Makovoz, Esq.
MAKOVOZ LAW GROUP
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Beverly Hills, CA 90212

on this 3rd day of February, 2016.

/s/Lynne Thompson
Lynne Thompson

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